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opinion

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October 16, 1958

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CONCORD, N.H.

Mr. Winfield J. Phillips
Bank Commissioner
State House
Concord, New Hampshire

Dear Commissioner Phillips:

You have inquired whether RSA 395:29, contemplating new deposits following a reduction of existing deposits by you upon approval of the Superior Court, requires that subsequent affairs of the institution be conducted separately for new deposits and old.

We reply in the affirmative.

Section 29, contemplating deposits received after the reduction of existing deposits upon a court order pursuant to section 27, requires that said institution shall thereafter "in all respects conduct its business relating to such new deposits as if it were a separate institution distinct from the one in which the old deposits were made." [Emphasis added] The meaning of this language is unmistakably clear and the requirement applies to reserves, lending capacity, bookkeeping, and all other banking and trust company activity. In point of practical effect it means two banks.

It is recognized that this requirement is perhaps cumbersome and unrealistic but it is nevertheless the law and too plain to be circumvented. It can readily be changed by act of the Legislature.

However, it appears upon further examination that there is an alternative which is found in RSA 396:11, which provides for a reorganization of a bank, said reorganization to provide for a reduction of existing deposits. This plan must be consented to in writing by a majority of stock and by two-thirds of the depositors, and if you approve it may then be filed with the Superior Court with the foregoing written consents, and the Court may approve the plan and place it into effect. Such a plan has the distinct additional advantage of having the depositors receive from the Valley Trust Company negotiable non-interest bearing certificates

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indicating the amount of the deficit charged to their individual account and no dividend shall be declared or paid and no distribution in liquidation shall be made on any stock except preferred stock issued under the provisions of RSA 396 until such certificates have been redeemed in full.

In my opinion this requirement would not encumber nor otherwise restrict nor relate to the relationship between the FDIC and individual depositors. Insurance of individual deposits would be of the deposits existing at the time the Valley Trust Company is approved for said purposes and said insurance would not apply nor relate to the non-interest bearing certificates above referred to. Furthermore, these certificates would not constitute an indebtedness of the bank nor otherwise restrict its activities in any way except that subsequent dividends either on earnings or in liquidation must yield to their priority.

If it is desired to open this bank at the earliest possible moment the depositors should be advised of their privilege to participate in this reorganization with the preferred position accorded them by the non-interest certificate bearing arrangement and given an opportunity to furnish you with written acceptance thereof within the next few days. If this is done - assuming stock consent is voted, which probably could be done in a matter of hours - appropriate petition to the Superior Court can be prepared and the matter heard in a very short period of time. Under these circumstances, reopening of the bank would not have to depend upon FDIC approval if both the depositors and the stockholders wish to do so and your approval is given.

Sincerely,

Louis C. Wyman
Attorney General